



JOHN L. COOPER
jcooper@fbm.com
D 415.954.4410

September 24, 2015

The Honorable William H. Alsup
United States District Judge
U.S. District Court
Northern District of California
450 Golden Gate Avenue
Courtroom 9, 19th Floor
San Francisco, CA 94102

Re: Apple v. Samsung

Dear Judge Alsup:

By Order dated September 16, 2015, (Doc #1316) Dr. Kearl was required to file a letter brief by September 24, 2015 explaining why he did not seek relief regarding production of unredacted material from Judge Koh in *Apple v. Samsung*, and to provide an estimate as to the expected timeline for completing production of these materials. This letter is filed in response to that Order.

By Order dated July 31, 2015 (Doc #1277) production of Dr. Kearl's report and testimony in *Apple v. Samsung* to Oracle and Google was ordered to occur prior to August 21, 2015. Dr. Kearl immediately contacted counsel for Samsung who, in turn, indicated that they would work with counsel for Apple to produce Kearl's reports and testimony. Counsel for Apple and Samsung worked together to prepare a redacted version of Dr. Kearl's report and testimony which was produced to Oracle and Google on August 20, 2015. Dr. Kearl believed that the redactions were required by the Protective Order in *Apple v. Samsung*, and that the redacted materials produced on August 20, 2015 were sufficient for the Oracle's purposes. Dr. Kearl believed that this production satisfied any obligations he had under the July 31, 2015 Order as well as the December 17, 2010 Protective Order (Doc #66) in the present action. Dr. Kearl personally had, and has, no objection to producing a full set of his materials in unredacted form. On September 2, 2015 Oracle notified counsel for Dr. Kearl via email that it took issue with the redactions. Google has expressed no issue with the redactions. On September 10, 2015, Oracle served its Statement Regarding Dr. Kearl's Lack of Compliance with the Court's Order, (Doc #1311). On September 14, 2015 Dr. Kearl filed his Statement responding to Oracle's Statement (Doc #1313) explaining what had been done to produce the redacted version of his report and testimony on August 20 and that he believed this discharged any duties on him. For these reasons, Dr. Kearl did not seek relief from Judge Koh in the *Apple v. Samsung* action.

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This subject was addressed with the Court and parties at the hearing on September 17 in the present matter where it was reported that the parties involved, together with Dr. Kearl, were in negotiations to achieve a stipulation regarding production of Dr. Kearl's materials.

On Friday, September 18, counsel for Oracle served a subpoena on counsel for Dr. Kearl requiring production to Oracle of Dr. Kearl's unredacted report and testimony in *Apple v. Samsung* on Wednesday, September 23. On September 18, 2015 Dr. Kearl gave notice of service of this subpoena to Apple and Samsung pursuant to paragraph 14 of the Protective Order in *Apple v. Samsung* and in accordance with paragraph 10 of the Protective Order in the present case. Apple and Samsung are the parties who designated portions of Dr. Kearl's report and testimony as Confidential. On September 19, Dr. Kearl gave Oracle notice of objections to the subpoena, including that 1) Dr. Kearl was precluded from producing materials designated Confidential pursuant to the subpoena, 2) Dr. Kearl expected that with notice of the subpoena Apple and Samsung would seek protective orders, 3) Dr. Kearl also objected to the subpoena on the grounds that it was served on the wrong entity, e.g., Dr. Kearl, whereas it should be served on Apple and Samsung as the parties who designated the materials sought as Confidential, and 4) Dr. Kearl also objected on the grounds that the return date for the subpoena was too short. These notifications given by Dr. Kearl fulfilled his obligations under the Protective Orders in both this case and in *Apple v. Samsung*. For these reasons Dr. Kearl has not sought relief in *Apple v. Samsung*.

On September 22 counsel for Oracle circulated a draft stipulation regarding production of Dr. Kearl's materials with only third party confidential materials redacted. On September 24 counsel for Oracle, Google, Samsung, Apple and Dr. Kearl indicated that a revised versions of this stipulation was agreeable to their clients. The agreed stipulation has been filed with the Court. Dr. Kearl believes that his report and testimony will be produced to Oracle and Google as provided in that stipulation by October 2, 2015.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John L. Cooper".

John L. Cooper

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